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March 15, 1983

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Mr. Charles W. Desmarais, Jr.
Financial Responsibility Administrator
Department of Safety
Hazen Drive
Concord, New Hampshire 03301

Re: Disposition of Bail Forfeitures

Dear Mr. Desmarais:

You have asked a question concerning the proper disposition of a bail forfeiture arising out of a motor vehicle action in district or municipal court. Specifically, you have asked whether the department of safety is entitled to the bail forfeiture, minus the court's prescribed share, under RSA 260:23 on the basis that it is a "forfeiture received ... under the provisions of any laws of the state relative to the use and driving of vehicles." The answer to your question appears to be that the county, and not the department, is entitled to a forfeiture of bail under the provisions of RSA Ch. 597, but that other fees, fines or forfeitures collected by district or municipal courts are to be distributed in accordance with RSA 260:23.

RSA 260:23 broadly provides that "[a]ll fees, fines and forfeitures received by any person under the provisions of any laws of the state relative to the use and driving of vehicles" shall be paid to the department. It then carves out exceptions for funds collected by district or municipal courts, which retain a portion for the use of the city or town, and by superior courts, which retain the full amount collected for the benefit of the county. These exceptions correlate directly with the provisions of RSA 502:14 (Supp. 1981), RSA 502-A:8 (Supp. 1981) and RSA 499:5 relative to the general method of disposition of fines and forfeitures collected by the courts.



RSA Ch. 597, however, establishes a specific mechanism for the deposit and collection of amounts furnished as bail, in all courts, which are forfeited by default. In brief, when a deposit of money required for bail in any criminal action has been made under RSA 597:2, these funds are "held for the use of the county" during the pendency of the proceeding under RSA 597:3. If the funds are declared forfeited by default, the initiation of separate proceedings by the county attorney is required in order to recover the forfeiture, and any judgment rendered on the forfeited amount is paid to the county treasury. RSA 597:31-597:38; see, Belknap County v. Laconia, 80 N.H. 251 (1922).

Because the forfeiture of money deposited as bail is subject to a specific disposition under a statute requiring a separate proceeding to obtain judgment on the forfeiture on the county's behalf, a bail forfeiture is not subject to the general dispositional provisions of RSA 260:23. In addition, any sum deposited with a district or municipal court pending appeal of a conviction under RSA 265:79 is made specifically subject to the recovery proceedings of RSA Ch. 597 by RSA 263:68.

If further questions arise, please let me know.

Very truly yours,

Betsy S. Westgate

Betsy S. Westgate
Assistant Attorney General
Division of Legal Counsel

BSW:ab
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